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Douglas M. Whatley

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA**

In re: ) CASE NO. 14-25146-D-7  
GILBERT G. CHAVEZ, ) D.C. NO. BHS-2  
Debtor. ) **MOTION FOR SALE OF  
ESTATE'S INTEREST IN REAL  
PROPERTY**

DATE: March 4, 2015  
TIME: 10:00 a.m.  
DEPT: D; COURTROOM 34  
Hon. Robert S. Bardwil

17       Douglas M. Whatley, duly appointed Chapter 7 Trustee in the above-captioned  
18 matter, through his counsel, Barry H. Spitzer, moves this Court for authority to sell the  
19 estate's interest in the real property commonly known as 5615 Timberland Drive, Foresthill,  
20 California 95631 (hereinafter referred to as the "Subject Property"), subject to the existing  
21 liens and encumbrances, pursuant to the provisions of section 363(b) of the Bankruptcy  
22 Code, to the Debtor for \$28,000.00, less a credit of \$13,000.00 for a claimed wildcard  
23 exemption for a net of \$15,000.00, "as-is" and "where-is" with no warranties or guarantees.

24 In support of his Motion, the Trustee states the following:

25       1. That the Debtor filed a Chapter 7 petition on May 15, 2014 and the Trustee  
26 was appointed that day.

27       2. That the Debtor's assets include the Subject Property and the Debtor has  
28 secured debt against the Subject Property in the approximate amount of \$404,506.00

1 through February 2015. The Debtor placed a fair market value on the Subject Property of  
2 \$404,000.00 on his Schedule A. The Trustee contends the fair market value on the  
3 Subject Property in a quick sale is approximately \$475,000.00. After an estimated cost of  
4 sale of 8% (\$38,000.00) and an exemption claimed of \$13,000.00, the Trustee contends  
5 the non-exempt equity in the Subject Property is approximately \$19,494.00 (\$475,000.00 -  
6 \$404,506.00 - \$38,000.00 - \$13,000.00).

7       3.     The holder of the deed of trust on the Subject Property, Nationstar Mortgage,  
8 LLC, has filed a Motion for Relief from Stay to allow foreclosure proceedings to commence  
9 under California law. It is alleged by Nationstar that the mortgage is in arrears by  
10 \$11,297.40 through December 1, 2014 after payments have not been made on the  
11 mortgage since July 1, 2014. The Subject Property has a tenant who has not paid rent in  
12 that time frame. The Trustee has obtained a judgment in the Placer County Superior Court  
13 against the tenant for possession of the Subject Property.

14       4.     The Trustee wishes to sell the estate's interest in the Subject Property "as-is"  
15 and "where-is" with no warranties or guarantees to the Debtor for \$28,000.00, less a credit  
16 of \$13,000.00 for a claimed wildcard exemption for a net of \$15,000.00. A copy of the  
17 Purchase and Sales Agreement is Exhibit "A." The Buyer has given the Trustee \$5,000.00.  
18 The Trustee believes it is in the best interest of the estate to sell the estate's interest in the  
19 Subject Property to the Debtor for net \$13,000.00.

20       5.     The Trustee requests that the Court establish overbid procedures at the  
21 hearing, if anyone but the Debtor seeks to purchase the Subject Property. Such overbid  
22 would have to pay the existing liens and encumbrances on the Subject Property and the  
23 \$13,000.00 for a claimed wildcard exemption, as well as any and all costs of transfer. To  
24 qualify as a bidder, the bidder must bring to the Court (or if appearing via telephone, deliver  
25 to the Trustee or his attorney prior to the hearing), a Cashier's Check or a certified check  
26 for \$19,000.00. This Cashier's or certified check shall serve as a non-refundable deposit  
27 if the overbid is successful.

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1       6. The Trustee seeks authority to execute any and all additional conveyances,  
2 assignments, schedules and other documents as may be necessary to consummate this  
3 sale.

4       7. The Trustee further seeks a waiver of the fourteen day waiting period  
5 imposed by Federal Rule of Bankruptcy Procedure, Rule 6004(h).

6 WHEREFORE, Douglas M. Whatley respectfully requests he be authorized to sell  
7 the estate's interest in the real property commonly known as 5615 Timberland Drive,  
8 Foresthill, California 95631, subject to the existing liens and encumbrances, pursuant to  
9 the provisions of section 363(b) of the Bankruptcy Code to the Debtor for \$28,000.00, less  
10 a credit of \$13,000.00 for a claimed wildcard exemption for a net of \$15,000.00 "as-is" and  
11 "where-is" with no warranties or guarantees; and authority to execute any and all additional  
12 conveyances, assignments, schedules and other documents as may be necessary to  
13 consummate this sale. The Trustee further seeks a waiver of the fourteen day waiting  
14 period imposed by Federal Rule of Bankruptcy Procedure, Rule 6004(h).

Respectfully submitted,

16 | DATED: February 11, 2015

LAW OFFICE OF BARRY H. SPITZER

By. 

BARRY H. SPITZER

Attorneys for Douglas

## **Chapter 7 Trustee**